

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CORBIS CORPORATION, a Nevada corporation, )  
v. Plaintiff, ) CASE NO. 2:09-CV-00657-TSZ  
INFINITY COMMERCIAL CAPITAL LLC, a Georgia corporation, )  
Defendant. )  
INFINITY COMMERCIAL CAPITAL LLC, a Georgia corporation, )  
Third-Party Plaintiff, )  
v. )  
LENOX MEDIA LLC, a dissolved Georgia corporation; ROBERT "ADAM" WISWELL and JANE DOE WISWELL, husband and wife, )  
Third-Party Defendants. )

**THE TEWELL FIRM**  
600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 44  
4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

Comes now INFINITY COMMERCIAL CAPITAL L.L.C., by and through its counsel of record DAVID TEWELL of THE TEWELL FIRM hereby answers Plaintiff's Complaint for Damages and Injunctive Relief, and brings its third-party complaint against LENOX MEDIA L.L.C. and ROBERT "ADAM" WISWELL:

## I. PARTIES

1. Answering Defendant is without sufficient information to admit or deny said allegation, and thus denies the same.
2. Denied. Answering Defendant is a Georgia Limited Liability Company with its principal place of business at 3150 Hwy 34 East, Suite 141, Newnan, Georgia

## II. JURISDICTION AND VENUE

3. Admitted.
4. Answering Defendant lacks information sufficient to form a belief as to the allegations contained in paragraph 4 and therefore denies the same.
5. Denied.

### III. BACKGROUND

6. Answering Defendant lacks information sufficient to form a belief as to the allegations contained in paragraph 6 and therefore denies the same.
7. Answering Defendant lacks information sufficient to form a belief as to the allegations contained in paragraph 7 and therefore denies the same.

ANSWER TO PLAINTIFF'S COMPLAINT  
FOR DAMAGES AND THIRD PARTY COMPLAINT - 2

**THE TEWELL FIRM**  
600 Stewart Street  
Suite 1100 | Seattle, WA 98101  
Tel: (206) 623-2369 | Fax: (206) 441-4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

1       8. Answering Defendant lacks information sufficient to form a belief as to the  
2       allegations contained in paragraph 8 and therefore denies the same.  
3  
4       9. Answering Defendant admits Infinity Commercial Capital is in the business of  
5       providing hotel and commercial mortgage lending services. Defendant denies it  
6       provides hotel and commercial mortgage lending services nationwide. Answering  
7       Defendant admits it owned a website located at the Internet domain address  
8       www.infinitycommercialcapital.com. Answer Defendant admits it uses the  
9       website www.infinitycommercialcapital.com to market its products and services.  
10      Answering Defendant lacks information sufficient to form a belief as to the  
11       allegations contained in the remainder of paragraph 9 and therefore denies the  
12       same.  
13  
14      10. Answering Defendant lacks information sufficient to form a belief as to the  
15       allegations contained in paragraph 10 and therefore denies the same.  
16  
17      11. Answering Defendant lacks information sufficient to form a belief as to the  
18       allegations contained in paragraph 11 and therefore denies the same.  
19  
20      12. Answering Defendant lacks information sufficient to form a belief as to the  
21       allegations contained in paragraph 12 and therefore denies the same.  
22  
23      13. Answering Defendant admits there are attached as Exhibit 1 images. Answering  
24       Defendant lacks information sufficient to form a belief as to the allegations  
25       contained in the remainder of paragraph 13 and therefore denies the same.  
26  
27  
28  
29  
30

- 1 14. Answering Defendant lacks information sufficient to form a belief as to the
- 2 allegations contained in paragraph 14 and therefore denies the same.
- 3
- 4 15. Answering Defendant lacks information sufficient to form a belief as to the
- 5 allegations contained in paragraph 15 and therefore denies the same.
- 6
- 7 16. Denied.

8 **IV. FIRST CAUSE OF ACTION – DIRECT COPYRIGHT INFRINGEMENT**

- 9 17. Denied, except as noted.
- 10 18. Denied.
- 11 19. Denied.
- 12 20. Denied.
- 13 21. Denied.
- 14 22. Denied.

15 **V. SECOND CAUSE OF ACTION – VICARIOUS COPYRIGHT INFRINGEMENT**

- 16 23. Denied, except as noted.
- 17 24. Answering Defendant admits it hired an independent contractor to create
- 18 www.infinitycommercialcapital.com. Answering Defendant lacks information
- 19 sufficient to form a belief as to the allegations contained in the remainder of
- 20 paragraph 24 and therefore denies the same.
- 21
- 22 25. Answering Defendant lacks information sufficient to form a belief as to the
- 23 allegations contained in paragraph 25 and therefore denies the same.
- 24
- 25 26. Denied.

26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
5510  
5511  
5512  
5513  
5514  
5515  
5516  
5517  
5518  
5519  
5520  
5521  
5522  
5523  
5524  
5525  
5526  
5527  
5528  
5529  
55210  
55211  
55212  
55213  
55214  
55215  
55216  
55217  
55218  
55219  
55220  
55221  
55222  
55223  
55224  
55225  
55226  
55227  
55228  
55229  
55230  
55231  
55232  
55233  
55234  
55235  
55236  
55237  
55238  
55239  
55240  
55241  
55242  
55243  
55244  
55245  
55246  
55247  
55248  
55249  
55250  
55251  
55252  
55253  
55254  
55255  
55256  
55257  
55258  
55259  
55260  
55261  
55262  
55263  
55264  
55265  
55266  
55267  
55268  
55269  
55270  
55271  
55272  
55273  
55274  
55275  
55276  
55277  
55278  
55279  
55280  
55281  
55282  
55283  
55284  
55285  
55286  
55287  
55288  
55289  
55290  
55291  
55292  
55293  
55294  
55295  
55296  
55297  
55298  
55299  
552100  
552101  
552102  
552103  
552104  
552105  
552106  
552107  
552108  
552109  
552110  
552111  
552112  
552113  
552114  
552115  
552116  
552117  
552118  
552119  
552120  
552121  
552122  
552123  
552124  
552125  
552126  
552127  
552128  
552129  
552130  
552131  
552132  
552133  
552134  
552135  
552136  
552137  
552138  
552139  
552140  
552141  
552142  
552143  
552144  
552145  
552146  
552147  
552148  
552149  
552150  
552151  
552152  
552153  
552154  
552155  
552156  
552157  
552158  
552159  
552160  
552161  
552162  
552163  
552164  
552165  
552166  
552167  
552168  
552169  
552170  
552171  
552172  
552173  
552174  
552175  
552176  
552177  
552178  
552179  
552180  
552181  
552182  
552183  
552184  
552185  
552186  
552187  
552188  
552189  
552190  
552191  
552192  
552193  
552194  
552195  
552196  
552197  
552198  
552199  
552200  
552201  
552202  
552203  
552204  
552205  
552206  
552207  
552208  
552209  
552210  
552211  
552212  
552213  
552214  
552215  
552216  
552217  
552218  
552219  
552220  
552221  
552222  
552223  
552224  
552225  
552226  
552227  
552228  
552229  
552230  
552231  
552232  
552233  
552234  
552235  
552236  
552237  
552238  
552239  
552240  
552241  
552242  
552243  
552244  
552245  
552246  
552247  
552248  
552249  
552250  
552251  
552252  
552253  
552254  
552255  
552256  
552257  
552258  
552259  
552260  
552261  
552262  
552263  
552264  
552265  
552266  
552267  
552268  
552269  
552270  
552271  
552272  
552273  
552274  
552275  
552276  
552277  
552278  
552279  
552280  
552281  
552282  
552283  
552284  
552285  
552286  
552287  
552288  
552289  
552290  
552291  
552292  
552293  
552294  
552295  
552296  
552297  
552298  
552299  
552300  
552301  
552302  
552303  
552304  
552305  
552306  
552307  
552308  
552309  
552310  
552311  
552312  
552313  
552314  
552315  
552316  
552317  
552318  
552319  
552320  
552321  
552322  
552323  
552324  
552325  
552326  
552327  
552328  
552329  
552330  
552331  
552332  
552333  
552334  
552335  
552336  
552337  
552338  
552339  
552340  
552341  
552342  
552343  
552344  
552345  
552346  
552347  
552348  
552349  
552350  
552351  
552352  
552353  
552354  
552355  
552356  
552357  
552358  
552359  
552360  
552361  
552362  
552363  
552364  
552365  
552366  
552367  
552368  
552369  
552370  
552371  
552372  
552373  
552374  
552375  
552376  
552377  
552378  
552379  
552380  
552381  
552382  
552383  
552384  
552385  
552386  
552387  
552388  
552389  
552390  
552391  
552392  
552393  
552394  
552395  
552396  
552397  
552398  
552399  
552400  
552401  
552402  
552403  
552404  
552405  
552406  
552407  
552408  
552409  
552410  
552411  
552412  
552413  
552414  
552415  
552416  
552417  
552418  
552419  
552420  
552421  
552422  
552423  
552424  
552425  
552426  
552427  
552428  
552429  
552430  
552431  
552432  
552433  
552434  
552435  
552436  
552437  
552438  
552439  
552440  
552441  
552442  
552443  
552444  
552445  
552446  
552447  
552448  
552449  
552450  
552451  
552452  
552453  
552454  
552455  
552456  
552457  
552458  
552459  
552460  
552461  
552462  
552463  
552464  
552465  
552466  
552467  
552468  
552469  
552470  
552471  
552472  
552473  
552474  
552475  
552476  
552477  
552478  
552479  
552480  
552481  
552482  
552483  
552484  
552485  
552486  
552487  
552488  
552489  
552490  
552491  
552492  
552493  
552494  
552495  
552496  
552497  
552498  
552499  
552500  
552501  
552502  
552503  
552504  
552505  
552506  
552507  
552508  
552509  
552510  
552511  
552512  
552513  
552514  
552515  
552516  
552517  
552518  
552519  
552520  
552521  
552522  
552523  
552524  
552525  
552526  
552527  
552528  
552529  
552530  
552531  
552532  
552533  
552534  
552535  
552536  
552537  
552538  
552539  
552540  
552541  
552542  
552543  
552544  
552545  
552546  
552547  
552548  
552549  
552550  
552551  
552552  
552553  
552554  
552555  
552556  
552557  
552558  
552559  
552560  
552561  
552562  
552563  
552564  
552565  
552566  
552567  
552568  
552569  
552570  
552571  
552572  
552573  
552574  
552575  
552576  
552577  
552578  
552579  
552580  
552581  
552582  
552583  
552584  
552585  
552586  
552587  
552588  
552589  
552590  
552591  
552592  
552593  
552594  
552595  
552596  
552597  
552598  
552599  
552600  
552601  
552602  
552603  
552604  
552605  
552606  
552607  
552608  
552609  
552610  
552611  
552612  
552613  
552614  
552615  
552616  
552617  
552618  
552619  
552620  
552621  
552622  
552623  
552624  
552625  
552626  
552627  
552628  
552629  
552630  
552631  
552632  
552633  
552634  
552635  
552636  
552637  
552638  
552639  
552640  
552641  
552642  
552643  
552644  
552645  
552646  
552647  
552648  
552649  
552650  
552651  
552652  
552653  
552654  
552655  
552656  
552657  
552658  
552659  
552660  
552661  
552662  
552663  
552664  
552665  
552666  
552667  
552668  
552669  
552670  
552671  
552672  
552673  
552674  
552675  
552676  
552677  
552678  
552679  
552680  
552681  
552682  
552683  
552684  
552685  
552686  
552687  
552688  
552689  
552690  
552691  
552692  
552693  
552694  
552695  
552696  
552697  
552698  
552699  
552700  
552701  
552702  
552703  
552704  
552705  
552706  
552707  
552708  
552709  
552710  
552711  
552712  
552713  
552714  
552715  
552716  
552717  
552718  
552719  
552720  
552721  
552722  
552723  
552724  
552725  
552726  
552727  
552728  
552729  
552730  
552731  
552732  
552733  
552734  
552735  
552736  
552737  
552738  
552739  
5527340  
5527341  
5527342  
5527343  
5527344  
5527345  
5527346  
5527347  
5527348  
5527349  
5527350  
5527351  
5527352  
5527353  
5527354  
5527355  
5527356  
5527357  
5527358  
5527359  
5527360  
5527361  
5527362  
5527363  
5527364  
5527365  
5527366  
5527367  
5527368  
5527369  
5527370  
5527371  
5527372  
5527373  
5527374  
5527375  
5527376  
5527377  
5527378  
5527379  
5527380  
5527381  
5527382  
5527383  
5527384  
5527385  
5527386  
5527387  
5527388  
5527389  
5527390  
5527391  
5527392  
5527393  
5527394  
5527395  
5527396  
5527397  
5527398  
5527399  
5527400  
5527401  
5527402  
5527403  
5527404  
5527405  
5527406  
5527407  
5527408  
5527409  
5527410  
5527411  
5527412  
5527413  
5527414  
5527415  
5527416  
5527417  
5527418  
5527419  
5527420  
5527421  
5527422  
5527423  
5527424  
5527425  
5527426  
5527427  
5527428  
5527429  
5527430  
5527431  
5527432  
5527433  
5527434  
5527435  
5527436  
5527437  
5527438  
5527439  
5527440  
5527441  
5527442  
5527443  
5527444  
5527445  
5527446  
5527447  
5527448  
5527449  
5527450  
5527451  
5527452  
5527453  
5527454  
5527455  
5527456  
5527457  
5527458  
5527459  
5527460  
5527461  
5527462  
5527463  
5527464  
5527465  
5527466  
5527467  
5527468  
5527469  
5527470  
5527471  
5527472  
5527473  
5527474  
5527475  
5527476  
5527477  
5527478  
5527479  
5527480  
5527481  
5527482  
5527483  
5527484  
5527485  
5527486  
5527487  
5527488  
5527489  
5527490  
5527491  
5527492  
5527493  
5527494  
5527495  
5527496  
5527497  
5527498  
5527499  
5527500  
5527501  
5527502  
5527503  
5527504  
5527505  
5527506  
5527507  
5527508  
5527509  
5527510  
5527511  
5527512  
5527513  
5527514  
5527515  
5527516  
5527517  
5527518  
5527519  
5527520  
5527521  
5527522  
5527523  
5527524  
5527525  
5527526  
5527527  
5527528  
5527529  
5527530  
5527531  
5527532  
5527533  
5527534  
5527535  
5527536  
5527537  
5527538  
5527539  
5527540  
5527541  
5527542  
5527543  
5527544  
5527545  
5527546  
5527547  
5527548  
5527549  
5527550  
5527551  
5527552  
5527553  
5527554  
5527555  
5527556  
5527557  
5527558  
5527559  
5527560  
5527561  
5527562  
5527563  
5527564  
5527565  
5527566  
5527567  
5527568  
5527569  
5527570  
5527571  
5527572  
5527573  
5527574  
5527575  
5527576  
5527577  
5527578  
5527579  
5527580  
5527581  
5527582  
5527583  
5527584  
5527585  
5527586  
5527587  
5527588  
5527589  
5527

27. Answering Defendant lacks information sufficient to form a belief as to the allegations contained in paragraph 27 and therefore denies the same.

28. Denied.

## VI. THIRD CAUSE OF ACTION – BREACH OF CONTRACT

29. Denied, except as noted.

30. Denied.

### 31. Denied.

32 Denied

33 Denied

## VII. AFFIRMATIVE DEFENSES

By way of further Answer, and as affirmative defenses to the Complaint, Answering Defendant alleges as follows:

1. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

2. The court lacks personal jurisdiction over Defendant. Defendant does not have sufficient contacts with Washington to be subject to personal jurisdiction in this action.

### 3 Venue in this court and district is:

Plaintiff has failed to join a necessary party to this action.

## THE TEWELL FIRM

600 Stewart Street

600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 441-  
4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

- 1 5. The Plaintiff's injuries or loss, if any, were caused in whole or in part by the
- 2 negligence or fault of persons other than Answering Defendant, and over whom
- 3 Answering Defendant had no control, including Plaintiff, Third-Party Defendant
- 4 Adam Wiswell and/or Lenox Media, LLC, other defendants, and other entities not
- 5 named as parties herein.
- 6 6. Pursuant to the doctrine of apportionment, Defendant is liable, if at all, only for its
- 7 proportionate share of Plaintiff's damages, after considering the total fault
- 8 attributable to all entities that caused Plaintiff's damages, including Plaintiff, the
- 9 other defendants, and other entities not parties to this action; and Answering
- 10 Defendant is entitled to contribution from all other defendants based on
- 11 comparative fault.
- 12 7. Answering Defendant is not liable, if at all, jointly and severally for the damages
- 13 caused by the intentional or negligent acts of others.
- 14 8. Plaintiff's claims are barred to the extent that it does not own valid copyrights in
- 15 the images at issue.
- 16 9. Plaintiff's claims are barred to the extent that it does not hold valid copyright
- 17 registrations in the images at issue. Plaintiff has failed to satisfy the requirement
- 18 of 17 U.S.C. §411(a) for at least some of the images that "no action for
- 19 infringement in the copyright in any United States work shall be instituted until
- 20 registration of the copyright claim has been made in accordance with this title."

29 THE TEWELL FIRM  
30 600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 441-  
4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

- 1 10. Plaintiff is not entitled to statutory damages or attorneys' fees under 17 U.S.C.
- 2 §412(2) to the extent Plaintiff did not register its claims of copyright prior to
- 3 Defendant's alleged infringements or within three months after first publication.
- 4
- 5 11. Plaintiff's claims are barred in whole or in part by license.
- 6 12. Plaintiff's claims are barred in whole or in part by estoppel.
- 7 13. Plaintiff's claims are barred in whole or in part by waiver.
- 8 14. Plaintiff is barred from obtaining the relief requested under the doctrine of
- 9 unclean hands.
- 10 15. Plaintiff has suffered no damages and/or has failed to mitigate its damages, if any.
- 11 16. At all times, Defendant acted in a commercially reasonable and lawful manner.
- 12 17. Plaintiff failed to protect and/or enforce its alleged rights.
- 13 18. Plaintiff has engaged in misuse of its copyrights.
- 14 19. Plaintiff engaged in fraud on the Copyright Office.
- 15 20. Plaintiff's claims are barred by the first sale doctrine.
- 16 21. Plaintiff's claims are barred, in whole or in part, by prior use and/or registration.
- 17 22. If Defendant should be found to have engaged in any infringing action, which
- 18 action Defendant denies, Defendant's actions, in the alternative, constituted and
- 19 were innocent infringement as Defendant was unaware of the infringing activity
- 20 and/or had a belief reasonably held that its actions were in accordance with the
- 21 law and existing agreements or understandings.
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30

- 1 23. Actual damages, if any, should be based on actual license fees.
- 2 24. Plaintiff's damages were proximately caused by intervening or superceding causes.
- 3 25. Answering Defendant incorporates herein by reference any affirmative defense of
- 4 any other defendant, to the extent that such affirmative defense is not adverse to any
- 5 interest of Answering Defendant.
- 6 26. All possible affirmative defenses may not have been alleged herein, insofar as
- 7 sufficient facts were not available after reasonable inquiry upon the filing of
- 8 Defendant's Answer and therefore, Defendants reserve the right to amend their
- 9 Answer to allege additional affirmative defenses if subsequent investigation
- 10 warrants.
- 11
- 12
- 13

#### **VIII. PRAYER FOR RELIEF**

15 WHEREFORE, Answering Defendant having fully answered the plaintiff's Complaint,  
16  
17 prays as follows:

- 18 1. Enter judgment in Answering Defendant's favor, dismissing Plaintiff's claims with
- 19 prejudice;
- 20 2. Award Answering Defendant its reasonable costs and attorneys fees as permitted
- 21 by law; and
- 22 3. Award any other, supplemental, or exemplary damages as the Court deems just
- 23 and appropriate.
- 24
- 25
- 26
- 27
- 28
- 29
- 30

**THE TEWELL FIRM**

600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 441-4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

### THIRD-PARTY COMPLAINT

COMES NOW INFINITY COMMERCIAL CAPITAL, herein Third-Party Plaintiff, and brings this Third-Party Complaint against LENOX MEDIA L.L.C. and ADAM WISWELL, and without admitting any matters previously denied, alleges as follows:

## L. PARTIES

- 1.1 Infinity Commercial Capital (“Infinity”) is a licensed business in the State of Georgia with its principle place of business at 3150 Hwy 34 East, Suite 141, Newnan, GA 30265.
- 1.2 Upon information and belief, Third-Party Defendant Robert “Adam” Wiswell resides in Evans, Georgia.
- 1.3 Upon information and belief, Third-Party Defendant Lenox Media, L.L.C. (“Lenox”) was a Domestic Limited Liability Company registered with the State of Georgia from September 19, 2006 until it was administratively dissolved May 16, 2008. Lenox Media L.L.C.’s principal office was 2095 Sonoma Pointe Drive, Columbus, Georgia 31909. Wiswell served as Lenox’s Registered Agent, Organizer, and Member/Manager.

## II. JURISDICTION AND VENUE

- 2.1 This is a civil action seeking damages for breach of contract and breach of warranties.
- 2.2 If this Court determines it has personal jurisdiction over Infinity, this Court has jurisdiction over this Third-Party Complaint under 28 U.S.C. §1367 because the

ANSWER TO PLAINTIFF'S COMPLAINT  
FOR DAMAGES AND THIRD PARTY COMPLAINT - 9

**THE TEWELL FIRM**  
600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 441-4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

1 claims are related to Plaintiff's claims under this Court's original jurisdiction and  
2 form part of the same case or controversy under Article III of the U.S.  
3 Constitution.  
4

5 2.3 If this Court determines it has personal jurisdiction over Infinity, this Court has  
6 personal jurisdiction over the Third-Party Defendants under RCW 4.28.185.  
7 2.4 If this Court determines the Western District of Washington is the proper venue  
8 for Plaintiff's claims of copyright infringement and breach of contract, venue is  
9 appropriate for the Third-Party Complaint pursuant to 28 U.S.C. §1391.  
10  
11

### III. BACKGROUND

13 3.1 Plaintiff Corbis Corporation has brought the above-captioned lawsuit against  
14 Infinity. Without admitting any of the allegations against it contained in  
15 Plaintiff's Complaint, Infinity refers to the allegations of Plaintiff's lawsuit as if  
16 stated herein, for the sole purpose of presenting the factual allegations Plaintiff  
17 has made. Infinity refers to its Answer, presented above herein, to demonstrate  
18 the admissions, denials, and other allegations made by Infinity in response to  
19 Plaintiff's Complaint.  
20  
21 3.2 Infinity is in the business of providing hotel, multi-family, and other commercial  
22 mortgage lending services.  
23  
24 3.3 Infinity has never designed a website, and is not and never has been in the  
25 business of website design.  
26  
27  
28

### THE TEWELL FIRM

600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 441-  
4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

3.4 Infinity has at all material times maintained a webpage at [www.Infinitycommercialcapital.com](http://www.Infinitycommercialcapital.com). Neither Infinity employees nor agents constructed the website.

3.5 Upon information and belief, Lenox is a professional website design company that regularly dealt in the creation and sale of websites.

3.6 Upon information and belief, Wiswell is a professional web designer who regularly dealt in the creation and sale of websites.

3.7 Upon information and belief, Wiswell served as Lenox's Registered Agent, Organizer, and Member/Manager.

3.8 Infinity Commercial Capital entered into an oral agreement with Lenox and/or Wiswell to design and maintain Infinity's website.

3.9 Lenox and/or Wiswell implicitly disclaimed any agency, partnership, joint venture or any other form of joint enterprise between Infinity and Lenox and/or Wiswell.

3.10 At all times relevant to this lawsuit, Lenox and/or Wiswell were independent contractors of Infinity for the purposes of web design. Neither Lenox, nor Wiswell, was under the direct control or supervision of Infinity regarding the web design.

3.11 For federal income tax purposes, Wiswell filed IRS Form 1099-MISC in 2008 for income received from Infinity for his web design services

## THE TEWELL FIRM

600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 441-4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

- 3.12 At all relevant times, Lenox and/or Wiswell controlled all access to the content on Infinity's website.
- 3.13 All acts and decisions regarding the procurement of images placed on the website were carried out by Lenox and/or Wiswell.
- 3.14 Lenox and/or Wiswell, without the input or assistance from Infinity, selected and uploaded the images that allegedly infringe Corbis' copyrights.
- 3.15 Lenox and/or Wiswell represented through conduct that they owned all of the rights in the work produced for Infinity's website.
- 3.16 On August 5, 2009, Infinity was served with a Summons and Complaint from Corbis Corporation listing direct copyright infringement, vicarious copyright infringement, and breach of contract related to the alleged copyright infringement. All causes of action listed in the Complaint relate to the digital images placed on the web pages created by Lenox and/or Wiswell for Infinity.
- 3.17 To the extent that any of the images on Infinity's website infringed Corbis' copyright, Lenox and/or Wiswell intentionally or negligently failed to obtain a license or other authorization from Corbis to copy, distribute, or publicly display such images.
- 3.18 To the extent that any of the images on Infinity's website infringed Corbis' copyright, Lenox and/or Wiswell intentionally or negligently uploaded images on Infinity's website knowing they failed to obtain a license from Corbis or other authority to publish and distribute the images.

ANSWER TO PLAINTIFF'S COMPLAINT  
FOR DAMAGES AND THIRD PARTY COMPLAINT - 12

**THE TEWELL FIRM**  
600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 441-4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

3.19 To the extent it is determined that any of the images on Infinity's website were accessed under any contract with Corbis, such as a Content License Agreement, Lenox and/or Wiswell, and not Infinity, agreed to such a contract.

3.20 If Plaintiff sustained any damages, it was solely and proximately caused by the acts or failures of Lenox and/or Wiswell.

3.21 All acts and failures to act were on behalf of Lenox and/or Wiswell and Wiswell's marital community, if any

#### IV. FIRST CAUSE OF ACTION: BREACH OF CONTRACT

4.1 Infinity repeats and realleges the allegations set forth above and incorporates the same by reference as if fully restated.

4.2 Infinity and Lenox and/or Wiswell entered into an oral contract for the creation and maintenance of Infinity's website.

4.3 Integrity paid a fair price to Lenox and/or Wiswell in exchange for the delivery of the website

4.4 Lenox and/or Wiswell implicitly agreed to and had a duty to obtain licenses for third-party proprietary content provided to Infinity on the website, to act legally in the creation and maintenance of Infinity's website, and not subject Infinity to a lawsuit or other claim based on the images located on Infinity's website.

4.5 To the extent that any images used on Infinity's website were proprietary to and used without authorization of Corbis, Lenox and/or Wiswell breached the oral agreement with Infinity when they intentionally or negligently failed to obtain

## THE TEWELL FIRM

600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 441-4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

licenses for use of third party content on the web pages it developed for Infinity violating federal copyright law and subjecting Infinity to this lawsuit.

4.6 As a result of the actions and conduct described above, Lenox and/or Wiswell are liable for breach of contract in an amount to be proven at trial.

**V. SECOND CAUSE OF ACTION – BREACH OF WARRANTY OF TITLE**

5.1 Infinity repeats and realleges the allegations set forth above and incorporates the same by reference as if fully restated.

5.2 Infinity paid a fair price to Lenox and/or Wiswell in exchange for delivery of the website.

5.3 Upon information and belief, Lenox and/or Wiswell are professional website designers that regularly deal in the creation and sale of internet websites. Lenox and/or Wiswell are merchants regularly dealing in goods of the kind, websites.

5.4 By delivering the website, Lenox and/or Wiswell warranted that the title conveyed shall be good, and its transfer rightful; and that the website was delivered free from any security interest or other lien or encumbrance of which Infinity at the time of contracting had no knowledge.

5.5 By delivering the website, Lenox and/or Wiswell warranted that the website would be delivered free of the rightful claim of any third person by way of infringement or the like.

5.6 There was no specific language in a contract or circumstances which give Infinity reason to know that Lenox and/or Wiswell did not claim title to the website

**THE TEWELL FIRM**  
600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 44  
4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

1 images or purported to sell only such right or title as or a third person had in the  
2 website images.

3 5.7 To the extent that any images used on Infinity's website were proprietary to  
4 Corbis, such proprietary interest was an encumbrance on the transfer of title to  
5 the website images.

6 5.8 To the extent that any images used on Infinity's website were proprietary to  
7 Corbis, Infinity had no knowledge of Corbis' interest therein, and therefore had  
8 no knowledge that the web pages were encumbered.

9 5.9 To the extent that any images used on Infinity's website were proprietary to  
10 Corbis, Lenox and/or Wiswell breached the warranty of title by delivering the  
11 website images to Infinity while the images were encumbered by Corbis'  
12 proprietary interest in such images.

13 6.0 As a result of the actions and conduct described above, Lenox and/or Wiswell are  
14 liable for breach of warranty of title in an amount to be proven at trial.

15  
16 **VI. INDEMNIFICATION AND CONTRIBUTION**

17 6.1 Infinity repeats and realleges the allegations set forth above and incorporates the  
18 same by reference as if fully restated.

19 6.2 While denying the allegations of Plaintiff's Complaint on file herein, Infinity  
20 alleges that in the event that Infinity is found in some manner responsible to  
21 Plaintiff, or to anyone else, as a result of the conduct, events, and matters

22  
23  
24  
25  
26  
27  
28  
29  
30 **THE TEWELL FIRM**  
600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 441-  
4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

1 described in Plaintiff's Complaint, Infinity contends that this liability would be  
 2 based solely upon a derivative form of liability not resulting from the conduct of  
 3 Infinity, but only from an obligation imposed upon it by law, and would,  
 4 therefore, be entitled to indemnity from Third-Party Defendants Lenox and/or  
 5 Wiswell for any and all recovery obtained by Plaintiff against Infinity.  
 6

7 6.3 If judgment should be recovered against Infinity and or if Infinity should enter  
 8 into a settlement, Infinity will be entitled to judgment, and the like amount in  
 9 proportion to fault, for equitable indemnity and/or contribution over and against  
 10 Lenox and/or Wiswell.  
 11

12 6.4 In addition, Infinity will be entitled to recover from Lenox and/or Wiswell all  
 13 costs, expenses, and attorney's fees that Infinity incurred in the defense of  
 14 Plaintiff's Complaint and incurred in the preparation, presentation, and  
 15 prosecution of this Third-Party Complaint.  
 16

17 **VII. PRAYER FOR RELIEF**

18 WHEREFORE, Third-Party Plaintiff prays for the following relief:  
 19

20 7.1 A determination that Third-Party Defendants Lenox and/or Wiswell's actions  
 21 breached the contract with Third-Party Plaintiff;  
 22

23 7.2 A determination that Third-Party Defendants Lenox and/or Wiswell's actions  
 24 breached the warranty of title;  
 25

26 7.3. A declaration that Lenox and/or Wiswell are contractually required to fully  
 27 indemnify and hold Infinity harmless for any and all liabilities, losses, damages,  
 28

29 **THE TEWELL FIRM**  
 30 600 Stewart Street  
 Suite 1100 | Seattle, WA | 98101  
 Tel: (206) 623-2369 | Fax: (206) 441-  
 4711 | [www.tewellfirm.com](http://www.tewellfirm.com)

1 costs, claims, fees, charges, suits, actions, judgments, and expenses of any kind  
2 arising out of the Plaintiff's suit;

3 7.4 An award to Third-Party Plaintiff of its reasonable costs and attorneys fees as  
4 permitted by law; and

5 7.5 An award to Third-Party Plaintiff of any other, supplemental, or exemplary  
6 damages as the Court deems just and appropriate.

7  
8 DATED this 21st day of September, 2009.

9  
10 THE TEWELL FIRM  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

s/ David Tewell  
DAVID TEWELL  
WSBA #9000  
600 Stewart Street, Suite 1100  
Seattle, WA 98101  
Telephone: 206-623-2369 Fax: 206-441-9711  
E-mail: [dtewell@tewellfirm.com](mailto:dtewell@tewellfirm.com)  
Attorney for Infinity Commercial Capital

1497-01/pleadings/answer

ANSWER TO PLAINTIFF'S COMPLAINT  
FOR DAMAGES AND THIRD PARTY COMPLAINT - 17

THE TEWELL FIRM  
600 Stewart Street  
Suite 1100 | Seattle, WA | 98101  
Tel: (206) 623-2369 | Fax: (206) 441-4711 | [www.tewellfirm.com](http://www.tewellfirm.com)